

TEXT OF PROPOSED REGULATIONS

In the following text, underlining indicates added or amended text; ~~strikethrough~~ indicates deleted text.

3375.2 Administrative Determinants

Subsection 3375.2(a) through 3375.2(a)(1) remain unchanged.

Subsection 3375.2(a)(2) is amended to read:

(2) An inmate with a history of sex crimes designated in section 3377.1(b) shall ~~not be housed in a Level 1 facility without perimeter gun towers nor shall they be assigned to a program or work detail outside any security perimeter unless under constant and direct supervision~~ be housed in accordance with their placement score and shall not be assigned outside the security perimeter.

Subsections 3375.2(a)(3) through 3375.2(b)(27) remain unchanged.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Wright v. Enomoto* (N.D. Cal. 1976) 462 F.Supp. 397; and *Stoneham v. Rushen* (1984) 156 Cal.App.3d 302.

3377.1. Inmate Custody Designations.

Subsections 3377.1(a) through (a)(9)(C) remain unchanged.

Subsections 3377.1(b) through (b)(1)(D) are amended to read:

(b) An "R" suffix shall be affixed to an inmate's custody designation to ensure the safety of inmates, correctional personnel, and the general public by identifying inmates who have a history of specific sex offenses as outlined in Penal Code (PC) Section 290 by a classification committee to the inmate's custody designation to alert staff of inmates who have a history of specific sex offenses.

(1) The "R" suffix shall be affixed during reception center processing if one of the following four criteria applies ~~designated for any inmate who was convicted of, or whose commitment offense includes an act equivalent to any of the following offenses:~~

(A) The inmate is required to register per PC Section 290. ~~Assault with intent to commit rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or penetration of genitals or anus with a foreign object. [Penal Code 220]~~

(B) The inmate's parole was revoked by the Board of Parole hearings-Hearings (BPH) formerly known as the Board of Prison Terms/Parole Hearing Division, Good Cause/Probable Cause finding-Finding of an offense that is equivalent to an offense listed in PC Section 290. ~~Rape.~~

(C) The inmate had a BPH formerly known as California Youth Authority/Youth Offender Parole Board sustained adjudication of an offense that is equivalent to an offense listed in PC Section 290 ~~Rape of Spouse.~~

(D) The inmate had a valid "R" suffix evaluation as defined in this section, resulting in the "R" suffix being affixed. ~~Rape or penetration of genitals or anal openings by foreign object; acting in concert by force or violence.~~

Subsections 3377.1(b)(1)(E) through (b)(1)(K) are deleted:

~~(E) Abduction to live in an illicit relationship.~~

~~(F) Incest.~~

~~(G) Sodomy.~~

~~(H) Sexually assaulting an animal.~~

~~(I) Lewd or lascivious acts with a child under 14.~~

~~(J) Oral copulation.~~

~~(K) Penetration of genital or anal openings by foreign object.~~

Subsection 3377.1(b)(2) is amended to read:

(2) Inmates with a prior "R" suffix evaluation inconsistent with Section 3377.1(b)(5) shall not have an "R" suffix applied. An "R" suffix evaluation must be completed at the receiving institution. Within six months upon reception of an inmate with a record of arrest or detention for any offenses listed in section 3377.1(b)(1), a classification committee shall determine the need for an "R" suffix to the inmate's custody designation. The committee shall consider the arrest reports and district attorney's comments related to each such arrest.

Subsection 3377.1(b)(3) is amended to read:

(3) Within six months of reception or at any time during an incarceration, inmates with records of arrest, detention, or charge of any offenses listed in PC Section 290, shall appear before a classification committee to determine the need to affix an "R" suffix to the inmate's custody designation. The committee shall consider the arrest reports and district attorney's comments related to each arrest. If a unit classification committee finds that an inmate may no longer require an "R" suffix, the committee shall refer the matter to the Institution Classification Committee for action.

Subsection 3377.1(b)(3)(A) is newly adopted to read:

(A) An inmate found guilty in a disciplinary hearing of a Division A-1, A-2, or B offense that is equivalent to an offense listed in PC Section 290 shall have an “R” suffix evaluation completed by a classification committee.

Subsection 3377.1(b)(4) is amended to read:

(4) The receiving institution’s initial classification committee shall affix the “R” suffix designation to an inmate’s custody during initial classification committee review when it is determined the “R” suffix was not applied at the reception center and the inmate meets one of the criteria listed in Subsection 3377.1(b)(1). ~~An inmate whose “R” suffix has been removed shall be eligible for any housing or assignment for which they otherwise would qualify had the “R” suffix never been designated.~~

Subsection 3377.1(b)(5) is amended to read:

(5) When completing an “R” suffix evaluation, the classification committee shall consider the arrest report(s) and district attorney’s comments. However, a classification committee may affix an “R” suffix if the arrest report(s) are available and the district attorney’s comments are unavailable. The classification committee shall document in a CDC Form 128-G the attempts/steps taken to obtain the required documentation. ~~When an “R” suffix has been considered and not applied, or has been removed at one facility, another facility shall not affix an “R” suffix. If the facility disagrees with the “R” removal or decision against “R” designation, it shall submit the case for a Departmental Review Board decision.~~

Subsections 3377.1(b)(5)(A) through (b)(5)(B) are newly adopted to read:

(A) An “R” suffix shall not be affixed when the required documentation is not available for review, unless approved by Departmental Review Board (DRB) decision. If the arrest report is unavailable, the district attorney’s comments or any other court or official documents shall be considered if available.

(B) DRB approval is required to affix an “R” suffix to an inmate’s degree of custody if the required relevant documents are not available to complete an “R” suffix evaluation.

Subsections 3377.1(b)(6) through (b)(13)(B) are newly adopted to read:

(6) If a Unit Classification Committee (UCC) finds that an inmate may no longer require an “R” suffix, the committee shall refer the case to the Institution Classification Committee (ICC) for review.

(7) Should a different facility UCC at the same institution disagree with the initial UCC’s decision to either affix or not affix the “R” suffix, the committee must refer the case to ICC for review.

(8) ICC can reverse an “R” suffix evaluation by a previous institution’s ICC only if new and compelling information is obtained. Otherwise, the case shall be referred for a DRB decision.

(9) An “R” suffix shall not be applied if the inmate was acquitted/found not guilty of the sex related charges in a court of law even if BPH Good Cause/Probable Cause Finding revoked his/her parole for those sex related charges.

(10) Inmates with “R” suffixes shall be housed in accordance with their placement score and shall not be assigned outside the security perimeter.

(11) Inmates who have obtained a valid Certificate of Rehabilitation pursuant to PC Section 4852.01 shall not have an “R” suffix affixed.

(12) An inmate whose “R” suffix has been removed shall be eligible for any housing or assignment for which they otherwise would qualify had the “R” suffix never been designated.

(13) The following terms are defined for the purposes of the “R” suffix custody designation:

(A) Institution means a large facility or complex of subfacilities with a secure (fenced or walled) perimeter headed by a warden.

(B) Facility means a subfacility of an institution headed by a facility captain.

Subsection 3377.1(c) remains unchanged:

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 290, 4852.01, 5054, and 5068, Penal Code, Americans With Disability Act (ADA) , 42 U.S.C. s 12131, et seq.; and Pennsylvania Department of Corrections v. Yeskey (1998) 524 U.S. 206.